



ITW
AJ

Atty. Docket: ITW-13111

THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

John H. Schneider et al. : Group Art Unit: 3721
Serial No.: 10/042,985 : Examiner: Truong, T.K.
Filed: October 19, 2001
Title: TAMPER-EVIDENT EASY-OPEN SLIDER
PACKAGE AND RELATED METHODS
OF MANUFACTURE

Hon. Commissioner for Patents
Alexandria, VA 22313

APPELLANTS' REPLY BRIEF

This Reply Brief is being submitted in response to the Examiner's Answer mailed on April 19, 2007 in the above-identified patent application.

Response to Examiner's Arguments

The Examiner's position on appeal and throughout the long prosecution of this application is based on a flawed premise, to wit: that a slit is a line of weakness. For example, in discussing the primary reference, US 6,360,513 to Strand, the Examiner's Answer states (on page 4): "Strand discloses the claimed invention, but does not expressly disclose that the line of weakness (13) is a slit." Later, in multiple locations, the Examiner's Answer asserts that a slit is torn. See, for example, on page 6: "Keller ('869), Deutschländer ('583) and Kopp ('997) all teach that a slit is intentionally designed to be easily torn by the consumer." Based on this misunderstanding that a slit can be torn, the Examiner equates a line of weakness, which is designed to be torn, with a slit,

which is already cut and does not need to be torn. The concept of tearing a slit is nonsensical and mistaken.

In accordance with Appellants' teaching, a slit is provided which extends from an elevation above a slider top to an elevation below a slider top. Since the bag material on both sides of the slit are already separated and disconnected by the slit, there is no need for any tearing of the material on one side of the slit away from material on the other side of the slit. While material before and after the slit is indeed torn, there is no tearing along the length of the slit. The only tearing that occurs near the slit is a first tear that starts at a tear initiator and terminates at a first end point of the slit and a second tear that emanates from a second end point of the slit and proceeds along a horizontal line of weakness at an elevation below the slider. There is no tearing of slit 20 (see Figure 1) but rather slit 20 is pre-cut during manufacture (see Figures 3 and 4).

As correctly noted by the Examiner, Appellants' original specification stated that lines of weakness could be used in place of slits. That line of weakness could be:

a line of spaced slits, a line of spaced perforations, a continuous or discontinuous score-line of thinned header material, a continuous or discontinuous line of pre-weakened header material, or any equivalent structure for providing a line of preferential tearing.

(Emphasis added.) It is important to appreciate that Appellants' specification disclosed that either a slit (that required no tearing) or a line of weakness (i.e., a line of

preferential tearing) could be used. However, nowhere does the specification state that a slit and a line of weakness are equivalent! Appellants are claiming the former, not the latter, in combination with other structural features.

The secondary references on which the Examiner relies are inapposite. Keller discloses a series of aligned slits that form a line of preferential tearing of the material between those adjacent slits. If such a line of preferential tearing were to be substituted for the inclined line of preferential tearing taught by Strand, the result would not be Appellants' invention as claimed, which recites a slit that extends from an elevation above the slider to an elevation below the slider and requires no tearing between its end points.

Furthermore, Deutschländer and Kopp respectively disclose slits 24 (Deutschländer, Figure 5) and 9 (Kopp, Figures 3 and 6) that extend to and start at the edge of the material and thus serve as tear initiators similar to the tear notch 24 of Strand (see Figure 5). If the teaching of Strand were to be modified by the teaching of Deutschländer or Kopp, it would be obvious to substitute the slit of Deutschländer or Kopp for the tear notch of Strand, not for the inclined line of weakness of Strand.

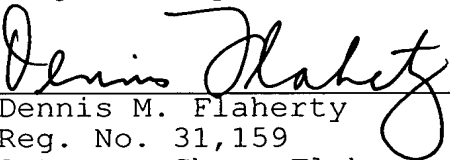
Finally, the Examiner's assertion at the top of page 5 that:

it appears that Strand's package would perform equally well with the lines of weakness (13),

is unsupported by evidence and is mere speculation. No person skilled in the art would assert that tearing plastic material along a line of preferential tearing would be as easy as if no tearing at all were required. No tearing is required along the length of Appellants' slit that extends from an elevation above the slider to an elevation below the slider.

In view of the foregoing, Appellants submit that claims 3, 7-11, and 58-65 are patentable over the combination of prior art cited by the Examiner. Accordingly, it is respectfully requested that the Final Rejection be overturned and that this application be allowed.

Respectfully submitted,


Dennis M. Flaherty
Reg. No. 31,159
Ostrager Chong Flaherty &
Broitman P.C.
570 Lexington Avenue
New York, NY 10022-6894
Tel. No.: 212-681-0600

June 18, 2007
Date

CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

June 18, 2007
Date


Dennis M. Flaherty